IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19017 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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BHABHAR TALUKA SAHAKARI KHARID VECHAN SANGH LTD. - Petitioner

Versus

STATE OF GUJARAT & 3 - Respondents

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Appearance :

MR PRAKASH K JANI for the Petitioner,
MS FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR VC VAGHELA for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 26/10/2005

ORAL JUDGMENT

1. Rule. Learned Assistant Government Pleader waives service of Rule on behalf of Respondent No.1. Mr. V.C.Vaghela, Learned Counsel waives service of Rule on

behalf of Respondent Nos. 2,3 and 4.

2. The present petition has been preferred against the order passed by State of Gujarat appointing Government nominees under Sub-section 2 of Section 80 of Gujarat Co-operative Societies Act, 1961 (hereinafter referred as the Act, 1961).

3. Learned Counsel appearing for the petitioner submitted that no opportunity of being heard has been given to the petitioner-society before appointment of Government nominees under Sub-section 2 of Section 80 of the Act, 1961 and hence, there is breach of principle of natural justice. The public interest which is alleged to have been involved has not been pointed out to the petitioner-society in any of the notices. In fact no notice as been given to the petitioner-society. It is vehemently submitted by the learned Counsel appearing for the petitioner that Respondent Nos.2,3 and 4 who have been appointed Government nominees had in fact tried to contest the election of the member of the Managing Committee of Bhabhar Taluka Sahakari Kharid Vechan Sangh Limited (which is a Cooperative Society registered under the Act, 1961) by filing up their forms. For the reasons best known to Respondent Nos. 2,3 and 4 they withdrew

their names from contesting elections and subsequently got themselves appointed through Government under Section 80(2) of the Act, 1961 and they achieved it indirectly in breach of the provisions of Section 80(2) of the Act, 1961. It is also submitted by the learned Counsel for the petitioner that Respondent No.2 had also contested the elections for Chairmanship Bhabhar Taluka Sahakari Kharid Vechan Sangh Limited after his nomination by Government, but he has lost the election of Managing Director. Learned Counsel for the petitioner has relied upon decision rendered by this Court in ***Amreli District Co-operative Sale & Purchase Union Ltd. & Ors. v. State of Gujarat reported in 1984(2) GLR 1244*** and ***Gujarat State Marketing Co-op. Federation Ltd. & Anr. V. State of Gujarat & Ors. reported in 2004(3) GLR 2342.*** The Government has nominated Respondent No.2,3 and 4 as members of the managing Committee of the Petitioner-Society vide order of 03/02/2005 (Annexure – H), therefore, deserves to be quashed and set aside.

4. I have heard learned Assistant Government Pleader who has submitted on behalf of Respondent No.1 that no notice of hearing have been given to the petitioner-society before the appointment of the Government nominees

and not being heard to the petitioner. Nonetheless, there is public interest in the affairs of the petitioner-society and therefore, Government has appointed three nominees keeping in mind the activities of the petitioner-society. Order passed by the Government under Sub-section 2 of Section 80 of the Act, 1961 is in the interest of public and hence, the petition may not be entertained by this Court.

5. I have heard learned Counsel appearing for Respondent No.2,3 and 4 who has submitted that petitioner-society has no legality to prefer the petition for want to resolution passed by the petitioner-society. It is also submitted by the learned Counsel appearing for Respondent No.2,3 and 4 that majority of them have already accepted the appointment made by the government as government nominees. It is also submitted that order of February, 2005 has been challenged at much belated stage, i.e. in the month September, 2005. There is long unexplained delay. Learned Counsel has also relied upon the judgment delivered by Supreme Court in ***Daman Singh and others, etc. Appellants v. State of Punjab and others, etc., Respondents reported in AIR 1985 SC 973*** and the judgment delivered by this Court in ***Gujarat State***

Marketing Co-op. Federation Ltd. & Anr. V. State of Gujarat & Ors. reported in 2004(3) GLR 2342 and submitted that order passed by the government appointing Respondent No.2,3 and 4 under Section 80(2) of the Act, 1961 as true , correct and in consonance with the facts of the case.

6. Having heard learned Counsels at length for both sides, looking to the facts and circumstances of the case, and judicial pronouncements which are referred herein above, I hereby quash and set aside the order passed by the government dated 03/02/2005(Annexure – H to the memo of the petition) mainly for the following facts and reasons:

(i) The State Government is very wide powers, but the powers are to be exercised keeping in mind the provisions of the Act and the judicial pronouncements given by this Court. It is held by this Court in ***Gujarat State Marketing Co-op. Federation Ltd. & Anr. V. State of Gujarat & Ors. reported in 2004(3) GLR 2342*** especially paragraph 10(f) as under:

“10.(a) to (e) ......xxxx.......

10.(f)the appointment of representatives

> *on the Committee of a society by nomination under the provisions of Sec.80(2) has civil consequences, and therefore, the principles of natural justice are required to be observed while forming the opinion that, having regard to the public interest involved in the operation of the society, it is necessary or expedient to nominate the representatives. For compliance with the principles of natural justice, adequate and meaningful opportunity of hearing has to be given to the society, and as a part thereof, the society has to be informed about the grounds on which the opinion as to involvement of public interest in the operation of the society was based and the necessity or expediency for the nomination had arisen. The guidelines evolved and issued in compliance with the observation in Paragraph 79 of the judgment in Amerli District Co-op. Sale & Purchase Union Ltd. (supra) are also required to be followed while exercising the power and the exercise of power has to be consistent with such guidelines and"*
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> *(emphasis supplied)*

As per aforesaid interpretation of Sub-section 2 of Section 80 of the Act, 1961, before appointment of the Government nominees by the government, opportunity of being heard ought to be given by the Cooperative Society. Opportunity of being heard in the present case has not been afforded to the petitioner. Shakesphare has said in "Othello": O!, It is excellent to have giant strength; but it is tyrraneous to use like as

giant”. The powers of the State and strength of the government is explicitly clear vide section 80 of the Act, 1961. But it can be exercised or used, after following the principles of natural justice as stated in the aforesaid judgment delivered by the Division Bench of this Court. The notice must be given to the Co-operative Society and the opportunity of being heard is a must. This *sine qua non* of the applicability of Section 80(2) of the Act, 1961 has not been complied with and hence, the order passed by the government dated 03/02/2005 (Annexure – H) is in violative of principles of natural justice and consequently in violation of Section 80 (2) of the Act, 1961.

(ii) The government nominees, as stated hereinabove have been appointed straight away without giving any notice or hearing. Respondent No. 2 to 4 had had already filed up the form for contesting elections for becoming the members of the managing Committee of the petitioner-society. For the reasons best known to Respondent No.2,3 and 4 they withdrew their names and these three

have been appointed by the government directly without following the procedure as stated hereinabove. As per aforesaid judicial pronouncements, all care ought to be taken by the government before appointment of such type of government nominees. It is ought to be kept in mind that government nominees should be appointed for better management of the petitioner-society and not to create further complexity in the management and the administration of the society. Those who have attempted to contest the election and subsequently withdrew their nomination, such type of government nominees could have been reserved for some other cooperative society, if they are efficient in the management of cooperative society.

(iii) It is vehemently contended by the learned Counsel for Respondent No.2,3 and 4 that there is no resolution passed by the petitioner-society for challenging the appointment of Respondent 2,3 and 4, but such resolution bearing No. 6 dated 10/02/2005 has already been

passed by the petitioner-society. It is contended that this resolution passed by the Society has not known to Respondent No.2,3 and 4. This argument has compelled the petitioner to file affidavit-in-rejoinder and to annexe Resolution No.6 dated 10/02/2005. This speaks volume about Respondent No.2,3 and 4 and their capacity to manage the aforesaid of the petitioner-society, being members of the managing Committee of the society, they are not aware about resolution passed by the Society.

(iv) It is vehemently submitted by the learned Counsel appearing for the government nominees that Respondent Nos.2,3 and 4 that, majority members of the petitioner-society has accepted the appointment of the Government nominees. This fact has also been contradicted in affidavit-in-rejoinder. The question raised in the petition, is the illegal method of appointment of Respondent No.2,3 and 4 which is in breach of provisions of Section 80(2) of the Act, 1961 to be read with judicial pronouncements referred herein above. Looking to the provisions and

judgments delivered by this Court, the appointment dated 03/02/2005 (Annexure -H) is in breach of principles of natural justice and in breach of Section 80(2) of the Act, 1961 coupled with the fact that there is denial of this fact in affidavit-in-rejoinder especially in paragraph 3 of affidavit-in-rejoinder filed by the petitioner. Thus, there is no substance in the argument that majority have accepted the appointment of the government nominees and therefore, illegality should be permitted by this Court.

(v) It is also contended by the learned Counsel for Respondent No.2,3 and 4 that there is delay and latches on the part of the petitioner in challenging the order of appointment of government nominees which is 03/02/2005. The petition is preferred in the month of September, 2005, looking to the facts and circumstances of the case and looking to the averments made in the memo of the petition and affidavit-in-rejoinder looking to the breach of principles of natural justice, there is no delay in preferring

the petition.

(vi) It is also contended by the learned Counsel for the government, that for the appointment of the nominees of the government, there is public interest in the affairs of the petitioner-society and therefore, there is appointment of government nominees under Section 80(2) of the Act, 1961. Neither the notice nor the order reflects the public interest in the petitioner Society. General argument that there is some public interest and therefore, the government nominees were appointed, is not accepted by this Court. So called public interest ought to have been reflected in the show-cause notice. Opportunity of being heard includes a clear and uncertain and unequivocal notice. If such notice would have been given by the government and opportunity of being heard would have been given by the government to the petitioner- society, it could have been replied by the Society.

7. As a cumulative effect of the aforesaid facts facts and circumstances of the case and judicial pronouncements, the order of appointment of Government

nominees dated 3rd February, 2005 (Annexure – H to the memo of the petition) is hereby quashed and set aside. Rule made absolute. No order as to costs.

[D.N.PATEL, J.]

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